

# Law of June 17, 1992\*

relating to annual and consolidated accounts  
of Luxembourg incorporated credit institutions



September 2006

**New consolidated version of the law of June 17, 1992 relating to:**

- the annual accounts and the consolidated accounts of credit institutions incorporated under Luxembourg law,
- requirements to the publication of financial statements of branches of credit- and financial institutions under foreign law, which has been amended by
  - the law of May 3, 1994 about
    - the transposing into the law on the financial sector Directive 92/30/EEG on the supervision of credit institutions on a consolidated basis;
    - divers other amendments to the law on the financial sector and the law on the accounts of credit institutions  
(Mém. A 1994, p. 702)
  - the law of December 19, 2002 on the Commercial and Companies Registry and the accounting practices and annual accounts of undertakings and amending divers other statutory provisions  
(Mém. A 149, p. 3630)
  - the law of March 16, 2006 relating to the introduction of the International Financial Reporting Standards for credit institutions.

This is a free translation of the original law in French. In case of differences between the French version and the English translation, the French version shall be the authentic text.

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# Part I: Scope

## Article 1

(1)<sup>1</sup>

Articles 2 through 112bis and article 118 apply to all credit institutions governed by Luxembourg law, as defined in the Financial Sector law of April 5, 1993 as amended.

However, the articles mentioned above are not applicable to rural savings banks as foreseen in article 12 of the law noted above. In this case, without prejudice to the application of this law to the central body, the entity which comprises the central body and its affiliated institutions must be included in the consolidated accounts and directors' report, being established, audited and published in conformity with this law.

Articles 83 through 106, 107 (1), (6), (7), (9), (10), (13) and (14), 108 (2), 109 and 112bis do not apply to credit institutions, the securities of which are traded on a regulated market of a Member State within the meaning of article 4, paragraph (1), point 14, of directive 2004/39/EC of the European Parliament and of the Council of April 21, 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

(2)

Articles 113, 114 and 118 apply:<sup>1</sup>

- to all branches of foreign credit institutions established in the Grand Duchy of Luxembourg in conformity with the above-mentioned law;
- to branches of financial institutions having their registered office in one of the Member States of the European Community, to the extent that directive 86/635/EEC is applicable in the country of origin (the directive concerns the annual accounts and consolidated accounts of credit institutions and other financial institutions).

<sup>1</sup> As modified by the law of March 16, 2006

## Part II: Annual accounts

### Chapter 1: General provisions

- Article 2**
- (1) Annual accounts shall comprise the balance sheet, the profit and loss account and the notes to the accounts. These documents shall constitute a composite whole.
- Credit institutions may include other financial statements in their annual accounts, in addition to the documents referred to in the first paragraph.<sup>1</sup>
- (2) Annual accounts shall be drawn up clearly and in accordance with this law.
- (3) Annual accounts shall give a true and fair view of the assets, liabilities, financial position and profit and loss account of the company.
- (4) Where the application of the provisions of this law is not sufficient to give a true and fair view within the meaning of paragraph (3) above, additional information must be given.
- (5) Where, in exceptional cases, the application of a provision of this law is incompatible with the obligation imposed in paragraph (3) above, that provision must be departed from in order that a true and fair view within the meaning of paragraph (3) be given. Any such departure must be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit and loss account.

### Chapter 2: General provisions concerning the balance sheet and the profit and loss account

- Article 3**
- The structure of the balance sheet and the profit and loss account, specifically as regards their presentation, must be applied consistently from one financial year to another. Derogations from this principle shall be permitted in exceptional cases. Any such derogations must be disclosed in the notes to the accounts together with the reasons for them.

- Article 4**
- (1) In the balance sheet, as well as in the profit and loss account, the items in the layouts foreseen by articles 7, 41 and 42 must appear separately and in the indicated order. A more detailed subdivision is authorised as long as it respects the structure of the layouts. New items may be added to the extent that their content is not already covered by any of the items foreseen in the layout.
- (2) The balance sheet and profit and loss account sub-items preceded by a lower-case letter may be combined:
- a) when they represent a negligible amount within the meaning of article 2, paragraph (3);
  - b) when the regrouping promotes clarity, on the condition that the combined items are presented in a distinct manner in the footnotes.
- The regroupings described in a) and b) may only be done after preliminary authorisation from the Commission de Surveillance du Secteur Financier<sup>2</sup>.
- (3) Each of the balance sheet and profit and loss account items must include the comparative amount from the preceding year. In the absence of comparability of the amounts from one financial year to another and, as the case arises, changes made to the amounts from the preceding financial year in order to ensure comparability, must be disclosed in the notes to the accounts together with relevant comments.

<sup>1</sup> As modified by the law of March 16, 2006

<sup>2</sup> Law of December 23, 1998 creating the Commission de Surveillance du Secteur Financier: Art. 28 (Mém. A 1998, p. 2985)

## Part II: Annual accounts

- (4) An item in the balance sheet or profit and loss account with a zero balance can be omitted except if there was a balance according to paragraph (3) in the preceding year.
- (5)<sup>1</sup> The layout of the amounts within the profit and loss account and the balance sheet shall refer to the substance of the reported transaction or arrangement.

### Article 5

A grand-ducal decree may modify the presentation of the balance sheet and profit and loss account in order to reflect the appropriation of the results.

### Article 6

All compensation between assets and liabilities or between expenses and revenues is forbidden, except when foreseen by this law.

## Chapter 3: Layout of the balance sheet

### Article 7

The following layout is applicable for the presentation of the balance sheet:  
As an alternative, credit institutions may adopt the balance sheet layout provided for under article 7bis<sup>1</sup>.

Assets	Liabilities
1. Cash in hand, balances with central banks and post office banks	1. Amounts owed to credit institutions: a) repayable on demand b) with agreed maturity dates or periods of notice
2. Treasury bills and other bills eligible for refinancing with central banks: a) Treasury bills and similar securities b) Other bills eligible for refinancing with central banks	2. Amounts owed to customers: a) saving deposits b) other debts ba) repayable on demand bb) with agreed maturity dates or periods of notice
3. Loans and advances to credit institutions: a) repayable on demand b) other loans and advances	3. Debt evidenced by certificates: a) debt securities in issue b) others
4. Loans and advances to customers	4. Other liabilities
5. Amounts due from leasing operations	5. Accruals and deferred income
6. Bonds and other fixed-income transferable securities: a) issued by public bodies b) issued by other borrowers	6. Provisions <sup>1</sup> : a) provisions for pensions and similar obligations b) provisions for taxation c) other provisions
7. Shares and other variable-yield securities	7. Subordinated liabilities
8. Participating interests	8. Special items with a reserve quota portion
9. Shares in affiliated undertakings	9. Subscribed capital
10. Intangible assets	10. Share premium account
11. Tangible assets	11. Reserves
12. Own shares	12. Revaluation reserve
13. Other assets	13. Profit or loss brought forward
14. Subscribed capital unpaid showing separately: called capital	14. Profit or loss for the financial year
15. Prepayments and accrued income	

<sup>1</sup> As modified by the law of March 16, 2006

## Part II: Annual accounts

Total assets	Total liabilities
	Off-balance sheet items
	1. Contingent liabilities, showing separately: a) acceptances and endorsements b) guarantees and assets pledged as collateral security
	2. Commitments, showing separately: commitments arising out of sale and repurchase transactions
	3. Fiduciary transactions

### Article 7bis<sup>1</sup>

Instead of the presentation of balance sheet items in accordance with article 7, credit institutions may present those items according to their nature and in the order of their relative liquidity, as long as the information provided is at least equivalent to that provided for under article 7.

### Article 8

- (1) Assets shall be shown under the relevant balance sheet headings even where the credit institution drawing up the balance sheet has pledged them as security for its own liabilities or for those of third parties or has otherwise assigned them as guarantee to third parties.
- (2) A credit institution shall not include in its balance sheet assets pledged or otherwise assigned to it as guarantee unless such assets are in the form of cash in the hands of that credit institution.

### Article 9

- (1) Where a loan has been granted by a syndicate consisting of a number of credit institutions, each credit institution participating in the syndicate shall disclose only that part of the total loan which it has itself funded.
- (2) If in the case of a syndicated loan such as described in paragraph (1), the amount of funds guaranteed by a credit institution exceeds the amount which it has made available, any additional guarantee portion shall be shown as a contingent liability (item 1, second indent).

### Article 10

Only those amounts which can at any time be withdrawn without notice or for which a maturity or period of notice of 24 hours or one working day has been agreed shall be regarded as repayable on demand.

### Article 11

- (1) Sale and repurchase transactions shall mean transactions which involve the transfer by a credit institution or customer (the "transferor") to another credit institution or customer (the "transferee") of assets, for example, bills, debts or transferable securities, subject to an agreement that the same assets will subsequently be transferred back to the transferor at a specified price.
- (2) If the transferable undertakes to return the assets on a date specified or to be specified by the transferor, the transaction in question shall be deemed to be a genuine sale and repurchase transaction.

<sup>1</sup> As modified by law of March 16, 2006

## Part II: Annual accounts

- (3) If, however, the transferee is merely entitled to return the assets at the purchase price or for a different amount agreed in advance on a date specified or to be specified, the transaction in question shall be deemed to be a sale with an option to repurchase.
- (4) The accounting for these transactions is as follows:
- a) In the case of a transaction deemed to be a genuine sale and repurchase transaction, the assets transferred shall continue to appear in the transferor's balance sheet; the purchase price received by the transferor shall be shown as an amount owed to the transferee. In addition, the value of the assets transferred shall be disclosed in a note in the transferor's accounts. The transferee shall not be entitled to show the assets transferred in his balance sheet; the purchase price paid by the transferee shall be shown as an amount owed by the transferor;
  - b) In the case of a transaction deemed to be a sale with an option to repurchase, however, the transferor shall not be entitled to show in his balance sheet the assets transferred; those items shall be shown as assets in the transferee's balance sheet. The transferor shall enter under off-balance sheet item 2 an amount equal to the price agreed in the event of repurchase.
- (5) Forward exchange transactions, forward transactions on exchange, transactions involving the issue of debt securities with a commitment to repurchase all or part of the issue before maturity or any similar transactions shall not be regarded as a sale and repurchase within the meaning of this article.

### Chapter 4: Special provisions relating to certain balance sheet items

#### Article 12

##### Assets: Item 1 – Cash in hand, balances with central banks and post office banks

- (1) Cash in hand shall comprise legal tender including foreign notes and coins.
- (2) This item may include only balances with the central banks and post office banks of the country or countries in which a credit institution is established. Such balances must be readily available at all times. Other claims on such bodies must be shown as loans and advances to credit institutions (item 3, Assets) or as loans and advances to customers (item 4, Assets).

#### Article 13

##### Assets: Item 2 – Treasury bills and other bills eligible for refinancing with central banks

- (1) This item shall comprise, under a), treasury bills and similar securities, i.e. treasury bills, treasury certificates and similar debt instruments issued by public bodies which are eligible for refinancing with the central banks of the country or countries in which a credit institution is established. Those debt instruments issued by public bodies which fail to meet the above condition shall be shown under Assets sub-item 6 (a).
- (2) This item shall comprise, under b), bills eligible for refinancing with central banks, i.e. all bills held in the portfolio that were purchased from credit institutions or from customers to the extent that they are eligible, under national law, for refinancing with the central banks of the country or countries in which the credit institution is established.

## Part II: Annual accounts

### Article 14

#### Assets: Item 3 – Loans and advances to credit institutions

- (1) Loans and advances to credit institutions shall comprise all loans and advances arising out of banking transactions to domestic or foreign credit institutions by the credit institution drawing up the balance sheet, regardless of their actual denomination.

The only exception shall be loans and advances represented by transferable securities, which must be shown under item 6, Assets and those amounts due from leasing operations which must be shown under item 5, Assets.

- (2) For the purposes of this article, credit institutions shall comprise all undertakings on the list published in the official journal of the European Communities pursuant to article 11 of directive 2000/12/EC<sup>1</sup>, as well as central banks and official domestic and international banking undertakings and all private and public undertakings which are not established in the Community but which qualify as bank or credit institutions and which are included in the official list, if available, of banks and credit institutions in the country or countries in which they are established, as well as other undertakings whose activity consists of the receipt of deposits or other reimbursable funds from the public and the granting of credits for their own account.

Loans and advances to undertakings which do not satisfy the above conditions shall be shown under item 4, Assets.

### Article 15

#### Assets: Item 4 – Loans and advances to customers

Loans and advances to customers shall comprise all types of assets in the form of claims on domestic and foreign customers other than credit institutions, regardless of their actual denomination.

The only exception shall be loans and advances represented by transferable securities, which must be shown under item 6, Assets and those amounts due from leasing operations which must be shown under item 5, Assets.

### Article 16<sup>2</sup>

#### Assets: Item 5 – Amounts due from leasing operations

This item shall comprise amounts receivable resulting from leasing activities, where those activities consist in the renting out of moveable or immovable goods specifically purchased for this activity by an institution which remains the owner, and where the rental period specified in the contract corresponds to the estimated useful economic life of the goods or where the contract permits the individual renting the goods during the course or at the end of the rental period to acquire in whole or part the goods rented for a price specified in the contract.

### Article 17

#### Assets: Item 6 – Bonds and other fixed-income transferable securities

- (1) This item shall comprise negotiable bonds and other fixed-income transferable securities issued by credit institutions, by other undertakings or by public bodies; such securities issued by the latter, however, shall be included only if they are not to be shown under item 2, Assets.
- (2) Transferable securities bearing interest rates that vary in accordance with specific factors, for example the interest rate on the inter-bank market or on the Euromarket, shall also be regarded as bonds and other fixed-income transferable securities.

<sup>1</sup> As modified by the law of March 16, 2006

<sup>2</sup> Law of May 3, 1994

## Part II: Annual accounts

### Article 18

#### Assets: Item 8 – Participating interests

For the purpose of this law, participating interests shall comprise rights in the capital of other undertakings, whether or not evidenced by certificates, the purpose of which is through a durable link to contribute to the activity of the company. A participating interest is assumed to be held if the holding in the capital of another undertaking exceeds 20%.

### Article 19

#### Assets: Item 9 – Shares in affiliated undertakings

The definition of affiliated undertakings is given in article 109 of this law.

### Article 20

#### Assets: Item 10 – Intangible assets

- (1) This item includes the sum of the following:
  - a) Formation expenses;
  - b) Research and development expenses;
  - c) Concessions, patents, licenses, trademarks as well as rights and similar assets, if they have been:
    - ca) acquired for valuable consideration but not, however, resulting from goodwill;
    - cb) created by the undertaking itself.
  - d) Goodwill, if it has been acquired for valuable consideration;
  - e) Payments on account of intangible assets.
- (2) The amounts included in items a) and d) in paragraph (1) shall be disclosed separately in the notes to the accounts.

### Article 21

#### Assets: Item 11 – Tangible assets

- (1) This item includes the sum of the following:
  - a) Land and buildings;
  - b) Plant and equipment;
  - c) Other fixtures and fittings, tools and equipment;
  - d) Payments on account and assets under construction.
- (2) The land and buildings occupied by a credit institution for its own activities shall be disclosed in the notes to the accounts.
- (3) “Land and buildings” shall include rights to immovables and other similar rights as defined by civil law.
- (4) Land and buildings not occupied by a credit institution for its own activities, but destined for resale, shall not be included in this item and shall be shown under item 13 – Other assets.

### Article 22

#### Assets: Item 12 – Own shares

The account shall include the nominal value of the undertaking's own shares, or, in the absence of a nominal value, the accounting par value.

## Part II: Annual accounts

### Article 23

#### **Assets: Item 13 – Other assets**

Included in this item are assets not foreseen by the other asset items in the layout.

### Article 24

#### **Assets: Item 15 – Prepayments and accrued income**

This item shall comprise expenses related to subsequent financial years but which were accounted for during the current year, as well as that income relating to the current year which will be receivable in subsequent years.

### Article 25

Value adjustments include all adjustments intended to reflect depreciation, whether permanent or not, from the assets as they exist at the date of the balance sheet.

### Article 26

#### **Liabilities: Item 1 – Amounts owed to credit institutions**

- (1) Amounts owed to credit institutions shall include all amounts arising out of banking transactions owed to other domestic or foreign credit institutions by the credit institution drawing up the balance sheet, regardless of their actual designations.

The only exception shall be liabilities represented by debt securities or by any other security, which must be shown under item 3, Liabilities.

- (2) For the purposes of this article credit institutions shall comprise all undertakings as defined in article 14, paragraph (2).

### Article 27

#### **Liabilities: Item 2 – Amounts owed to customers**

- (1) This item shall include all amounts owed to creditors that are not credit institutions within the meaning of article 26 regardless of their actual designations.

The only exception shall be liabilities represented by debt securities or by any other security, which must be shown under item 3, Liabilities.

- (2) Savings bonds shall be shown under the corresponding sub-item only if they are not represented by negotiable certificates.

### Article 28

#### **Liabilities: Item 3 – Debt evidenced by certificates**

- (1) This item shall include both debt securities and debts for which negotiable certificates have been issued, in particular deposit receipts, “bons de caisse” and liabilities arising out of the undertaking’s own acceptances and promissory notes.

- (2) Only acceptances which a credit institution has issued for its own refinancing and in respect of which it is the first party liable (“drawee”) shall be treated as its own acceptances.

## Part II: Annual accounts

### Article 29

#### Liabilities: Item 4 – Other liabilities

Included in this item are other liabilities not foreseen by the other liability items in the layout.

### Article 30

#### Liabilities: Item 5 – Accruals and deferred income

This item must include income receivable in the current financial year which is, however, related to a subsequent financial year, as well as charges related to the current financial year but which have not yet been paid.

### Article 31

#### Liabilities: Item 6 – Provisions

- (1)<sup>1</sup> Provisions are intended to cover liabilities the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.
- (2) It is also allowable to set up provisions covering charges originating in the current or earlier financial year, whose nature is clearly identified and for which, at the date of the balance sheet, there is a probable or certain, but undetermined, doubt as to their amount or as to the date of their occurrence.
- (3)<sup>1</sup> Provisions may not be used to adjust the values of assets.

### Article 32

#### Liabilities: Item 7 – Subordinated liabilities

Where it has been contractually agreed that, in the event of winding up or of bankruptcy, liabilities, whether or not evidenced by certificates, are to be repaid only after the claims of the other creditors have been met, the liabilities in question shall be shown under item 7, Liabilities.

### Article 33

#### Liabilities: Item 8 – Special items with a reserve quota portion

This item consists of those amounts which are eligible for tax exemption. This exemption includes gains as referred to in articles 53, 54 and 54bis LIR. The notes to the accounts shall disclose the different items and the basis upon which they were established.

### Article 34

#### Liabilities: Item 9 – Subscribed capital

This item shall comprise all amounts, regardless of their actual designations, which, in accordance with the legal structure of the institution concerned, are regarded under national law as equity capital subscribed by the shareholders or other proprietors. The unpaid portion of subscribed capital at the date of the balance sheet shall be included in item 14, Assets. The portion which is called shall be disclosed separately in a sub-item.

<sup>1</sup> As modified by law of March 16, 2006

## Part II: Annual accounts

### Article 35

#### Liabilities: Item 11 – Reserves

This item comprises the following types of reserves:

1. Legal reserve;
2. Reserve for own shares;
3. Statutory reserves;
4. Other reserves.

These types of reserve must be shown separately, as sub-items of item 11, Liabilities, in the balance sheets of the credit institutions concerned, with the exception of the revaluation reserve which shall be shown under item 12.

### Article 36

#### Liabilities: Item 12 – Revaluation reserve

The revaluation reserve is established according to the provisions of article 53.

### Article 37

#### Off-balance sheet: Item 1 – Contingent liabilities

This item shall comprise all transactions whereby an institution has underwritten the obligations of a third party.

The following shall be included as sub-items:

- liabilities arising out of the endorsement of rediscounted bills and acceptances other than own acceptances;
- sureties and assets pledged as collateral security, including all guarantee obligations incurred and assets pledged as collateral security on behalf of third parties, particularly in respect of sureties and irrevocable letters of credit.

### Article 38

#### Off-balance sheet: Item 2 – Commitments

This item shall include every irrevocable commitment which could give rise to a credit risk.

Commitments arising out of sale and repurchase transactions shall include commitments entered into by a credit institution in the context of sale and repurchase transactions (on the basis of firm agreements to sell with options to repurchase) within the meaning of article 11.

### Article 39

#### Off-balance sheet: Item 3 – Fiduciary transactions

- (1) This item comprises all fiduciary transactions expressly covered by the law dated July 27, 2003<sup>1</sup> relating to trusts and fiduciary contracts.
- (2) Those fiduciary transactions which are not expressly covered by the law of July 27, 2003<sup>1</sup>, must be included in the balance sheet. The total amount of such assets and commitments shall be disclosed separately in the balance sheet or in the notes to the accounts, broken down according to the various asset and liability items.
- (3) The assets acquired in the name of and for the account of third parties shall not be included in the balance sheet.

<sup>1</sup> As modified by law of March 16, 2006

### Chapter 5: Layout of the profit and loss account

#### Article 40

For the presentation of the profit and loss account, the credit institution shall select one of the layouts disclosed in articles 41 and 42.

By way of derogation from article 2, paragraph (1) of this law, credit institutions may present a statement of their performance instead of the presentation of profit and loss items in accordance with articles 41 or 42, provided that the information given is at least equivalent to that otherwise required by those articles<sup>1</sup>.

#### Article 41

Vertical layout

1. Interest receivable and similar income, showing separately:  
that arising from fixed-income transferable securities
2. Interest payable and similar charges
3. Income from transferable securities:
  - a) Income from shares and other variable-yield transferable securities
  - b) Income from participating interests
  - c) Income from shares in affiliated undertakings
4. Commissions receivable
5. Commissions payable
6. Net profit or net loss on financial operations
7. Other operating income
8. General administrative expenses:
  - a) Staff costs, showing separately:
    - wages and salaries
    - social security costs, with a separate indication of those relating to pensions
  - b) Other administrative expenses
9. Value adjustments in respect of items 10 and 11, Assets
10. Other operating charges
11. Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
12. Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
13. Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
14. Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
15. Allocation to "special items with a reserve quota portion"
16. Income from the reversal of "special items with a reserve quota portion"
17. Tax on profit or loss on ordinary activities
18. Profit or loss on ordinary activities after tax
19. Extraordinary income
20. Extraordinary charges
21. Extraordinary profit or loss
22. Tax on extraordinary profit or loss
23. Extraordinary profit or loss after tax
24. Other taxes not shown under the preceding items
25. Profit or loss for the financial year

<sup>1</sup> As modified by law of March 16, 2006

## Part II: Annual accounts

### Article 42

#### Horizontal layout

<b>A. Charges</b>	<b>B. Income</b>
1. Interest payable and similar charges	1. Interest receivable and similar income, showing separately: that arising from fixed-income securities
2. Commissions payable	2. Income from transferable securities: a) Income from shares and other variable-yield transferable securities b) Income from participating interests c) Income from shares in affiliated undertakings
3. Net loss on financial operations	3. Commissions receivable
4. General administrative expenses: a) Staff costs, showing separately: - wages and salaries - social security costs, with a separate indication of those relating to pensions b) Other administrative expenses	4. Net profit on financial operations
5. Value adjustments in respect of items 10 and 11, Assets	5. Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
6. Other operating charges	6. Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
7. Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments	7. Other operating income
8. Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings	8. Income from the reversal of "special items with a reserve quota portion"
9. Allocation to "special items with a reserve quota portion"	9. Profit or loss on ordinary activities after tax
10. Tax on profit or loss on ordinary activities	10. Extraordinary income
11. Profit or loss on ordinary activities after tax	11. Extraordinary profit after tax
12. Extraordinary charges	12. Loss for the financial year
13. Tax on extraordinary profit or loss	
14. Extraordinary loss after tax	
15. Other taxes not shown under the preceding items	
16. Profit for the financial year	

### Chapter 6: Special provisions relating to certain items in the profit and loss account

#### Article 43

Article 41, items 1 and 2 (vertical layout),  
article 42, items A1 and B1 (horizontal layout)

#### Interest receivable and similar income and interest payable and similar charges

These items shall include all profits and losses arising out of banking activities, including:

1. all items from assets entered under asset items 1 to 6 in the balance sheet, however calculated. Such income shall also include income arising from the spreading on a time basis of the discount on assets acquired at an amount below, and liabilities contracted at an amount above, the sum payable at maturity;
2. all charges arising out of liabilities entered under liability items 1, 2, 3 and 7, however calculated. Such charges shall also include charges arising from the spreading on a time basis of the premium on assets acquired at an amount above, and liabilities contracted at an amount below, the sum payable at maturity;
3. income and charges resulting from covered forward transactions, spread over the actual duration of the contract and similar in nature to interest;
4. fees and commissions similar in nature to interest and calculated on a time basis or by reference to the amount of the claim or liability.

#### Article 44

Article 41, item 3 (vertical layout),  
article 42, item B2 (horizontal layout)

#### Income from shares and other variable-yield transferable securities, from participating interests and from shares in affiliated undertakings

This item shall comprise all dividends and other income from variable-yield transferable securities, from participating interests and from shares in affiliated undertakings. Income from shares in investment companies shall also be included under this item.

#### Article 45

Article 41, items 4 and 5 (vertical layout),  
article 42, items A2 and B3 (horizontal layout)

#### Commissions receivable and commissions payable

Without prejudice to article 43, commissions receivable shall include income in respect of all services supplied to third parties, and commissions payable shall include charges for services rendered by third parties, in particular:

- commissions for guarantees, loan administration on behalf of other lenders and securities transactions on behalf of third parties;
- commissions and other charges and income in respect of payment transactions, account administration charges and commissions for the safe custody and administration of securities;
- commissions for foreign currency transactions and for the sale and purchase of coins and precious metals on behalf of third parties;
- commissions charged for brokerage services in connection with savings and insurance contracts and loans.

## Part II: Annual accounts

### Article 46

Article 41, item 6 (vertical layout),  
article 42, item A3 or item B4 (horizontal layout)

#### Net profit or net loss on financial operations

This item covers:

1. the net profit or loss on transactions in transferable securities which are not held as financial fixed assets as defined in article 56 together with value adjustments and value re-adjustments on such securities, taking into account, where article 58, paragraph (3), has been applied, the difference resulting from application of that article; however, for those credit institutions which exercise the option provided for in article 62, these net profits or losses and value adjustments and value re-adjustments shall be included only in so far as they relate to transferable securities included in a trading portfolio;
2. the net profit or loss on exchange activities, without prejudice to article 43, point 3;
3. the net profits or losses on other buying and selling operations involving financial instruments, including precious metals.

### Article 47

Article 41, items 11 and 12 (vertical layout),  
article 42, items A7 and B5 (horizontal layout)

#### Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments

and

#### Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments

- (1) These items shall include, on the one hand, charges for value adjustments in respect of loans and advances to be shown under asset items 3, 4 and 5 and provisions for contingent liabilities and for commitments to be shown under off-balance sheet items 1 and 2 and, on the other hand, credits from the recovery of written-off loans and advances and amounts written back following earlier value adjustments and provisions.
- (2) For those credit institutions which exercise the option provided for in article 62 these items shall also include the net profit or loss on transactions in transferable securities included in items 6 and 7, Assets which are neither held as financial fixed assets as defined in article 56 nor included in the trading portfolio, together with value adjustments and value re-adjustments on such transferable securities taking into account, where article 58, paragraph (3) has been applied, the difference resulting from application of that article. The nomenclature of this item shall then be adapted as follows:  
[Value adjustments in respect of loans and advances and transferable securities not held as financial fixed assets and which are not included in the trading portfolio, as well as provisions for contingent liabilities and for commitments,](#)  
and  
[Value re-adjustments in respect of loans and advances and transferable securities not held as financial fixed assets and which are not included in the trading portfolio, as well as provisions for contingent liabilities and for commitments.](#)
- (3) The credit institutions may offset the charges and income covered by these items against each other, so that only a net item (income or charge) is shown.

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### Article 48

Article 41, items 13 and 14 (vertical layout),  
article 42, items A8 and B6 (horizontal layout)

Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings

and

Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings

- (1) These items shall include:
  - charges for value adjustments in respect of the items shown in items 6, 8 and 9, Assets;
  - amounts written back following earlier value adjustments,in so far as the charges and income relate to transferable securities held as financial fixed assets as defined in article 56, participating interests and shares in affiliated undertakings. These items shall include, moreover, the net profit or loss on sales of transferable securities with the character of fixed income securities held as financial fixed assets as defined in article 56.
- (2) The credit institutions may offset the charges and income covered by these items against each other, so that only a net item (income or charge) is shown.

### Article 49

- (1) The items “Extraordinary income” and “Extraordinary charges” shall not include income and charges within the ordinary activities of the undertaking.
- (2) If the income and charges foreseen by paragraph (1) are important to the understanding of the results of the undertaking, disclosure of the amount and nature of these items shall be given in the notes to the accounts. This provision is also applicable in the case of income and charges attributable to another financial year.

### Article 50

The taxes on net profit from ordinary activities and the taxes on extraordinary profit may be combined in the profit and loss account in an item appearing before “Other taxes not shown under the preceding items”. The new item shall be called “Taxes on ordinary and extraordinary profit”. In this case, the items “Profit or loss on ordinary activities after tax” and “Extraordinary profit or loss after tax” shall be omitted.

When this derogation is applied, credit institutions must disclose the fractions of the taxes related separately to ordinary and extraordinary profit in the notes to the accounts.

### Chapter 7: Valuation rules

- Article 51** (1) The valuation of the items in the annual accounts shall be based on the following general principles:
- a) the company is presumed to be a going concern;
  - b) the valuation methods shall not be modified from one year to another;
  - c) the principle of prudence must be observed at all times, namely:
    - aa) only profits made at the balance sheet date shall be accounted for in the profit and loss account;
    - bb) account must be taken of all liabilities arising in the course of the financial year concerned or of a previous one, even if such liabilities become apparent only between the date of the balance sheet and the date on which it is drawn up;
    - cc) all depreciation must be taken into account, whether or not the result of the current financial year is a profit or a loss;
  - d) all charges and income relating to the current financial year must be accounted for, whether or not paid;
  - e) the components of the assets and liabilities must be valued separately;
  - f) the opening balance sheet of one financial year must correspond to the closing balance sheet of the previous financial year.
- (1)bis<sup>1</sup> In addition to those amounts recorded pursuant to article 51, paragraph (1), point c) bb), credit institutions may take account of all foreseeable liabilities and potential losses arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up.
- (2) Derogations from the above-mentioned general principles are allowed in exceptional circumstances. When such derogations occur they must be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit and loss account.
- Article 52** The valuation of the items in the annual accounts shall be made according to the dispositions of articles 54 through 64, based on the principle of acquisition cost or production cost.
- Article 53** A grand-ducal decree may, by derogation to article 52, authorise or impose for all credit institutions:
- a) valuation based on replacement value of fixed assets, the utilisation of which is limited in duration, and inventory;
  - b) valuation of the items in the annual accounts, including the shareholders equity account, based on another method than foreseen in a), in order to take into account inflation;
  - c) revaluation of fixed assets<sup>1</sup>.
- The content, limits and methods of application for the decrees foreseen above in a), b) and c) shall be in compliance with article 33 of directive 78/660/EEC, dated July 25, 1978.
- Article 54** (1) a) Formation expenses must be amortised over a maximum of five years.  
b) In so far that formation expenses have not completely been amortised, any distribution of profit is allowed, unless the amount of the available reserves and profit brought forward is not at least equal to the unamortised expenses.

<sup>1</sup> As modified by the law of March 16, 2006

## Part II: Annual accounts

- (2) The components of formation expenses shall be disclosed in the notes to the accounts.
- (3) As opposed to charges resulting from the current activity of an undertaking, formation expenses are comprised of charges incurred in conjunction with the creation or expansion of an undertaking, of a portion or of a branch of an undertaking.

### Article 55

- (1) Article 54 (1) and (2) are applicable to the item “Research and development expenses”.
- (2) Article 54, paragraph (1) a) is applicable to item “Goodwill”.

### Article 56

- (1) The following assets shall be valued as fixed assets:
  - a) Items 10 and 11, Assets.
  - b) Financial fixed assets. This term is taken to mean participating interests (item 8, Assets), shares in affiliated undertakings (item 9), debt securities and fixed-income transferable securities the purpose of which is to contribute on a durable basis to the activity of the undertaking (item 6, Assets).
  - c) Other asset items the purpose of which is to contribute on a durable basis to the activity of the undertaking.
- (2)
  - a) Fixed assets, as specified above, shall be valued at acquisition cost or production cost without prejudice to b), c), d) and e) above;
  - b) The acquisition cost or production cost of fixed assets with a limited life shall be reduced by value adjustments, systematically calculated based on their utilisation period;
  - c)
    - aa) A value adjustment may be made for financial fixed assets if there exists a reduction in their value at their balance sheet date;
    - bb) A value adjustment shall be made for fixed assets if there exists a durable reduction in their value at the balance sheet date, regardless of whether their utilisation is limited;
    - cc) The valuation at the inferior value foreseen in aa) and bb) above shall not be maintained if the reasons for which the value adjustments were made no longer exist;
  - d) Where the acquisition cost of debt securities and fixed-income transferable securities held as financial fixed assets exceeds the amount repayable at maturity the amount of the difference shall be charged to the profit and loss account under item “Interest payable and similar charges” (item 2 – vertical layout; item A1 – horizontal layout). However, the difference may be written off in installments so that it is completely written off by the time when the debt securities are repaid. The difference that corresponds to the net amortised value since the acquisition date must be shown separately in the balance sheet or in the notes to the accounts;
  - e) Where the purchase price of the securities referred to in d) above is less than the amount repayable at maturity, the amount of the difference may be released to income in installments over the period remaining until repayment, under item “Interest receivable and similar income” (item 1 – vertical layout; item B1 – horizontal layout). The difference corresponding to the accumulated proratation value since the acquisition date shall be shown separately in the balance sheet or in the notes to the account;
  - f) If exceptional value adjustments of fixed assets are made only for tax purposes disclosure shall be made in the notes to the accounts of this value adjustment.

## Part II: Annual accounts

- (3) The acquisition cost shall include the costs to purchase the assets.
- (4)
  - a) The production cost shall be comprised of the acquisition cost of raw materials and incorporated assets and the direct costs of the related product;
  - b) A reasonable fraction of indirect costs of the product, if incurred during the production period, may be included in the production cost.
- (5) Interest on borrowings incurred in order to finance the production of fixed assets may be included in production costs as long as the interest is related to the period of production. In this case, their inclusion in assets must be disclosed in the notes to the accounts.

### Article 57

Tangible fixed assets and raw materials and consumable assets which are continually replaced and for which total value is immaterial to the undertaking may be combined in assets at a fixed quantity and value, if the quantity, value and composition of such assets does not vary materially.

### Article 58

- (1) All assets other than those identified in article 56, paragraph (1) are valued as current assets.
- (2)
  - a) Current assets must be valued at acquisition cost or production cost, without prejudice to letters b) and c) below;
  - b) A value adjustment shall be made to current assets in the case when market value is lower than acquisition cost at the balance sheet date. In certain circumstances, another value inferior to the acquisition cost at the balance sheet date may be used as the basis of the value adjustment;
  - c) Exceptional value adjustments are authorised where based on a reasonable commercial assessment in order to avoid, in the near future, the modification of the valuation of these items due to fluctuations of value. The amount of these value adjustments must be separately disclosed in the profit and loss account or in the notes to the accounts;
  - d) The valuation at the lower value foreseen by b) and c) shall not be maintained if the reasons for the value adjustment no longer exist;
  - e) If, for tax purposes, exceptional value adjustments to current assets are made, the amount of the adjustments properly justified must be disclosed in the notes to the accounts.
- (3) By derogation to paragraph (2) a), credit institutions are authorised to include in the balance sheet fixed-income transferable securities not held as financial fixed assets at their higher market value at the balance sheet date. The difference between the acquisition cost and the higher market value is disclosed in the notes to the accounts.
- (4) The definition of acquisition cost or production cost, defined in article 56, paragraphs (3) and (4), apply. Article 56 paragraph (5) is applicable. The distribution costs can not be included in the production cost.

### Article 59

The acquisition cost or production cost of inventory in the same category as well as all of the fungible items, including transferable securities, may be calculated under one of three methods; average price, "First in - First out" (FIFO), "Last in - First out" (LIFO), or an analogous method.

## Part II: Annual accounts

- Article 60**
- (1) When the amount of reimbursement of a debt is greater than the amount received, the difference may be accounted for as an asset. It should be separately disclosed in the balance sheets or in the notes to the accounts.
- (2) This difference shall be amortised on a reasonable annual basis and no later than maturity date.
- Article 61**
- Provisions may not exceed in amount the sums which are necessary.<sup>1</sup>
- Article 62**
- (1) Loans and advances to credit institutions and customers (items 3 and 4, Assets), amounts due from leasing operations (item 5, Assets) and debt securities, shares and other variable-yield transferable securities included in items 6 and 7, Assets, which are neither held as financial fixed assets as defined in article 56, paragraph (1) nor included in a trading portfolio may be shown at a value lower than that which would result from the application of article 58, paragraph (2) of this law, where for reasons of prudence such is required as a result of the particular risks associated with banking operations. Nevertheless, the difference between the two values must not be more than 4% of the total amount of the assets mentioned above after application of article 58.
- (2) The lower value resulting from the application of paragraph (1) may be maintained until the credit institution decides to adjust it.
- Article 63**
- (1) Credit institutions may create a liability item 8bis “Fund for general banking risks”. That item shall include those amounts which a credit institution decides to put aside to cover such risks as required by the particular risks associated with banking operations.
- (2) The increases of “Fund for general banking risks” and the income arising from the partial or total reversal of the fund must be shown separately in the profit and loss account as “Increases of fund for general banking risk” (item 16bis in the vertical layout or item A 9bis in the horizontal layout) and “Income from the decrease of fund for general banking risks” (item 16ter in the vertical layout or B 8bis in the horizontal layout, respectively).
- Article 64**
- (1) Assets and liabilities denominated in foreign currencies shall be translated into the currency of the capital at the rate of exchange on the balance sheet date.
- However, assets held as financial fixed assets and tangible and intangible assets, without prejudice to the following provision, which are not covered or not specifically covered in either the spot or forward markets, may be translated in the currency of the capital at the rates ruling on their acquisition dates. If it is expected that the foreign currency into which these assets are denominated has suffered from a depreciation of a durable nature, a value adjustment shall be made so that these assets are expressed at their lower value at the balance sheet date.
- (2) Unsettled spot exchange transactions shall be translated in the currency of the capital at the spot rates of exchange ruling on the balance sheet date.
- Unsettled forward exchange transactions shall be translated in the currency of the capital at the forward rate ruling on the balance sheet date for the remaining maturity.

<sup>1</sup> As modified by the law of March 16, 2006

## Part II: Annual accounts

- (3) Without prejudice to article 43, point 3, the differences between the book values of the assets, liabilities and forward transactions and the amounts produced by translation in accordance with paragraphs (1) and (2) shall be shown as follows:
- a) Differences arising from spot transactions not covered by forward transactions and from forward transactions not covered by spot transactions will be neutralised through “Prepayments and accrued income” and “Accruals and deferred income” accounts, therefore resulting in no effect on the profit and loss account;
  - b) Losses from negative translation differences relating to assets and liabilities not covered by forward transactions must be accounted for in the profit and loss account. A gain from a positive translation difference may be accounted for in the profit and loss account;
  - c) Losses from negative translation differences arising from uncovered forward transactions shall be accounted for in the profit and loss account. However, gains from positive translation differences shall not be accounted for in the profit and loss account.
- (4) When applying one of the methods foreseen by article 76 of the present law, the translation differences may be offset in part or in total in “Prepayments and accrued income” or in “Accruals and deferred income”. The positive and negative differences comprising the offset amount shall be separately disclosed in the balance sheet or in the notes to the accounts.

### Chapter 7bis: Valuation determined by reference to fair value<sup>1</sup>

#### Article 64bis

By way of derogation from article 52, credit institutions may determine the value of their financial instruments by reference to fair value.

#### Article 64ter

Notwithstanding article 51, paragraph (1) (c), credit institutions may include a change in value resulting from the valuation of a financial instrument in accordance with article 64bis in the profit and loss account or directly in equity, in a fair value reserve.

#### Article 64quater

Where the value of financial instruments is determined by reference to fair value, the notes to the accounts shall include:

- a) the significant assumptions underlying the valuation models and techniques that may have been used;
- b) per category of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as those changes included in the fair value reserve;
- c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
- d) a table showing movements in the fair value reserve during the financial year.

#### Article 64quinquies

By way of derogation from article 52, credit institutions may determine the value of certain categories of assets other than financial instruments by reference to fair value.

#### Article 64sexies

Notwithstanding article 51, paragraph (1) (c), credit institutions may include a change in value resulting from the valuation of an asset in accordance with article 64quinquies in the profit and loss account.

<sup>1</sup> As modified by the law of March 16, 2006

### Chapter 8: Contents of the notes to the accounts

#### Article 65

Apart from the information already required in other provisions of this law, the notes to the accounts shall include the following information regarding the items in the balance sheet such as outlined in the layout in article 7 of this law:

- (1) Item 8, Assets: the amount of the participating interests in other credit institutions.
- (2) Item 9, Assets: the amount of shares in affiliated undertakings which are credit institutions.
- (3) Item 2a), Liabilities: the total sum of savings deposits which are repayable on demand and at term or which have agreed periods of notice.
- (4) Separate disclosure for each item and sub-item 3 b), 4 and 5, Assets, and 1 b), 2 a), 2 b) bb) and 3b), Liabilities, for loans and advances and amounts owed, segregated according to their remaining maturity as follows:
  - up to three months,
  - between three months and one year,
  - between one year and five years,
  - more than five years.

For item 4, Assets, the amount of loans for an undetermined duration must be shown. When the loans and advances and amounts owed include payments by installments, the definition of the remaining maturity is that period from the balance sheet date to the due date of each installment.
- (5) The amounts coming due in the year following the balance sheet date for item 6, Assets, (debt securities including fixed-income transferable securities) and sub-item 3 a), Liabilities (debt securities in issue) shall be disclosed.
- (6) The breakdown of the transferable securities included in items 6 through 9, Assets, according to whether or not they are quoted on an exchange.
- (7) The breakdown of the transferable securities in item 6, Assets, according to whether or not they have been considered as financial fixed assets as defined in article 56, as well as the criteria used to distinguish the category of financial fixed assets.
- (8) The breakdown of amounts due from leasing operations (item 5, Assets), distinguishing between those undertaken with credit institutions and those with customers.
- (9) The composition of the principal elements comprising the item “Other assets” and “Other liabilities” in the balance sheet if they are considered important for the understanding of the annual accounts. Moreover, their amount must be disclosed and an explanation of their nature shall be given.
- (10) The number and the nominal value and, when a nominal value does not exist, the par value of the share capital subscribed during the financial year within the limits of the authorised capital.
- (11) When there exist several categories of shares, the number and nominal value or, when a nominal value does not exist, the par value of each type of share.

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- (12) The existence of beneficial shares, convertible bonds and securities or rights with similar characteristics, with an indication of the number of each security and the rights conferred by each.
- (13) The charges paid for subordinated liabilities by the credit institution during the course of the financial year. Moreover, disclosure of the following shall be made:
- in respect of each borrowing which exceeds 10% of the total amount of the subordinated liabilities:
    - (i) the amount of the borrowing, the currency in which it is denominated, the interest rate and the maturity date or the fact that it is a perpetual issue;
    - (ii) the circumstances if any in which early repayment is required;
    - (iii) the terms of the subordination, the existence of any provisions to convert the subordinated liability into capital or some other form of liability and the terms of any such provisions.
  - an overall indication of the rules governing other borrowings.
- (14) The total amount of assets and liabilities denominated in foreign currencies, which are translated into the currency in which the annual accounts are prepared.
- (15) A. The movements in the following assets considered to be fixed assets, as defined in article 56:
1. Participating interests (Item 8)
  2. Shares in affiliated undertakings (Item 9)
  3. Debt securities including fixed-income transferable securities held as financial fixed assets (included in item 6)
  4. Intangible assets (Item 10) including:
    - a) Formation expenses;
    - b) Research and development expenses;
    - c) Concessions, patents, licences, trademarks and similar rights and assets, if there were:
      - ca) acquired for valuable consideration, however, not including goodwill;
      - cb) created by the undertaking itself;
    - d) Goodwill, if acquired for valuable consideration;
    - e) Payments on account.
  5. Tangible assets (Item 11) including:
    - a) Land and buildings;
    - b) Plant and equipment;
    - c) Other fixtures and fittings, tools and equipment;
    - d) Payments on account and assets under construction;
  6. Other asset items referred to in article 56, paragraph (1) c).

In addition, the notes to the accounts shall separately disclose, for each of the items and sub-items noted above, starting from the acquisition cost or production cost, the additions and disposals, and transfers in the year, cumulative value adjustments at the balance sheet date and corrections made in the year to value adjustments of previous years. The obligation to separately disclose the value adjustments does not however apply to participating interests, shares in affiliated undertakings and transferable securities held as financial fixed assets. The value adjustments for these latter items may be combined with other items.

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- B. If, at the time of preparation of the first annual accounts in conformity with the present law, the acquisition cost or the production cost of an fixed asset item cannot be determined without excessive cost or time delay, the residual value at the beginning of the financial year may be considered as the production cost. The application of this exception must be disclosed in the notes to the accounts.
- C. In applying article 53, the revaluated acquisition cost or production cost of the various fixed asset items referred to in point A) of the present paragraph shall be the starting point from which the movements of the year are disclosed.

### Article 66

Credit institutions shall disclose the following in the balance sheet or in the notes to the accounts:

- (1) Separately for each item noted below:
  - loans and advances, whether or not represented by a certificate, to affiliated undertakings, and which are included in items 2 through 6, Assets;
  - loans and advances, whether or not represented by a certificate, to related undertakings, and which are included in items 2 through 6, Assets;
  - debts, whether or not represented by a certificate, owed to affiliated undertakings, and which are included in items 1, 2, 3 and 7, Liabilities;
  - debts, whether or not represented by a certificate, owed to related undertakings, and which are included in items 1, 2, 3, and 7, Liabilities.
- (2) Separately for each item in the layout and the sub-items created as a result of paragraph (1): subordinated assets.

Subordinated assets, whether or not represented by a certificate, are those assets, the rights of which in case of liquidation or bankruptcy, can only be exercised after the rights of other creditors.
- (3)
  - a) If an asset or liability is shown under more than one item, the relationship between the captions must be disclosed if it is necessary for the understanding of the annual accounts;
  - b) The own shares of the undertaking as well as the shares in affiliated undertakings, may not be included in other items in the layout other than those expressly foreseen for this purpose.

### Article 67

- (1) The credit institution shall disclose in the notes to the accounts the nature and the amount of each type of contingent liability included in item 1 of the off-balance sheet, considered significant in comparison to the global activity of the undertaking.

The above mentioned contingent liabilities relating to affiliated undertakings must be disclosed separately.
- (2) Credit institutions shall provide information on the amount of assets given in guarantee for transactions entered into by themselves or on behalf of third parties (including any contingent liabilities), for each liability or off-balance sheet item.

Separate mention must be made of assets given in guarantee for transactions entered into on behalf of third parties.

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- (3) The credit institution shall disclose in the notes to the accounts the nature and amount of each type of commitment included in item 2 of the off-balance sheet, considered significant compared to the global activity of the undertaking. Separate mention must be made of transactions entered into on behalf of affiliated undertakings.

Moreover, the undertaking must disclose those commitments which are disclosed neither in the balance sheet nor in the off-balance sheet, if disclosure of these commitments is useful to the understanding of the financial position. Commitments relating to pensions and to transactions entered into on behalf of affiliated undertakings must be separately disclosed.

- (4) All types of forward transactions which are outstanding at the balance sheet date must be disclosed for each type of transaction, if a significant portion has been entered into for purposes of hedging fluctuations in interest rates, foreign exchange rates or market prices and if a significant portion has been entered into in relation to the commercial operations of the undertaking.

These types of transactions include all operations for which the income and charges relate to article 41 item 6, article 42 items A3 or B4 or article 43, point 3, for example, foreign currencies, precious metals, transferable securities, "bons de caisse" and other assets.

- (5) Disclosure must be made if management and fiduciary services provided by an undertaking to third parties represent a significant portion of the global activities of the undertaking.

### Article 68

Moreover, credit institutions shall furnish the following in the notes to the accounts:

- (1) The valuation methods applied to the various items in the annual accounts, as well as the methods used to calculate any value adjustments made. Disclosure must be made of the basis used to convert into the currency of the capital of the undertaking, items of the annual accounts currently or originally denominated in foreign currencies.
- (2) The name and registered office of every undertaking in which the company directly or indirectly holds at least 20% of the capital must be disclosed. In addition, details must be given of the proportion of the capital held, the shareholders' equity and the profit or loss for the latest financial year. The above information may be omitted if it is of negligible importance with regards to the objective of article 2, paragraph (3). Disclosure of capital and reserves and of the profit or loss for the latest financial year may be omitted if the undertaking in question does not publish its balance sheet itself and if less than 50% of its capital is held directly or indirectly by the company.
- (3) The break down of income in items 1, 3, 4, 6 and 7 of article 41 or items B1, B2, B3, B4 and B7 of article 42 by geographic market when, from the point of view of the credit undertaking, there exist considerable differences between the various markets.
- (4) Disclosure of the amount and nature of the principal components of "Other operating charges" and "Other operating income" if it is essential to the understanding of the annual accounts.

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- (5) The average number of employees during the year, broken down by categories.
- (6) The extent to which, in a departure from article 51 and articles 54 through 64quater, the profit or loss for the year has been affected by a valuation of various items on a fiscal basis, whether the valuation was made in the current year or in a previous year. Any significant effect of such a valuation on future tax charges must also be disclosed.
- (7) The difference between the tax charge for the year and for previous years and the tax charge already paid or payable for these years, if this difference is significant in terms of future taxation. This amount may also be disclosed in the balance sheet as a separate item.
- (8) The remuneration granted during the financial year to members of the administrative, management and supervisory bodies of the undertaking by reason of their responsibilities, as well as any commitments arising or entered into in conjunction with retirement pensions on behalf of former members of these organisations. This information must be disclosed as a total for each category.
- (9) Advances and loans granted to members of the administrative, management and supervisory bodies of the undertaking, as well as any commitments entered into for these individuals by way of guarantees of any kind. This information must be disclosed as a total for each category.
- (10)
  - a) The name and registered office of the undertaking preparing the consolidated accounts of the largest number of undertakings of which the company forms part as a subsidiary undertaking;
  - b) The name and registered office of the undertaking preparing the consolidated accounts of the smallest number of undertakings of which the company forms part as a subsidiary undertaking and which is also included in the body of undertakings referred to in a) above;
  - c) The place where copies of the consolidated accounts referred to in a) and b) above may be obtained, provided that they are available.
- (11)<sup>1</sup> Where the fair value method is not used for financial instruments, in accordance with chapter 7bis:
  - a) for each category of financial derivatives:
    - i) the fair value of instruments, if the said value can be determined using either of the following methods:
      - a market value, for those financial instruments for which a reliable market can readily be identified. Where a market value is not readily identifiable for an instrument but can be identified for its components or for a similar instrument, the market value may be derived from that of its components or for a similar instrument; or
      - a value resulting from generally accepted valuation models and techniques, for those instruments for which a reliable market cannot be readily identified. Such valuation models and techniques shall ensure a reasonable approximation of the market value.
    - ii) information about the extent and the nature of the instruments, and

<sup>1</sup> As modified by the law of March 16, 2006

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- b) for those long-term investments referred to in article 64bis carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with article 56, paragraph (2) (c) aa):
  - i) the carrying value and the fair value of either the individual assets or appropriate groupings of those individual assets;
  - ii) the reasons as to why the carrying value has not been written down and specifically the nature of the information that leads to believe that the carrying value will be recovered.

(12)<sup>1</sup> Separately, the aggregate amount of fees paid during the financial year to the statutory auditor or the audit firm for the audit of the financial statements, the aggregate amount of fees paid for other assurance services, the aggregate amount of fees paid for tax consulting services and the aggregate amount of fees paid for other services.

### Article 69

- (1) The disclosures prescribed in article 68, paragraph (2) may be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings referred to in article 68, paragraph (2). Any such omission must be disclosed in the notes to the accounts.
- (2) Paragraph (1) shall also apply to the information prescribed in article 68, paragraph (3).
- (3) The disclosure prescribed in the first sentence of article 68, paragraph (2) concerning the amount of shareholders equity and the profit or loss for the latest financial year may be omitted:
  - a) where the undertakings concerned are included in the consolidated accounts prepared by the parent company or in the consolidated accounts of a larger entity as described in article 80, paragraph (2) of this law  
or
  - b) where the rights in the capital of the undertakings held by the parent company are accounted for in the annual accounts of the parent company in conformity with article 76 or in the consolidated accounts of the parent company in conformity with article 103 of this law.

## Chapter 9: Contents of the directors' report

### Article 70

- (1)<sup>1</sup>
  - a) The annual report shall include at least a fair review of the development and performance of the credit institution's business and of its position, together with a description of the principal risks and uncertainties that it faces.  
The review shall be a balanced and comprehensive analysis of the development and performance of the credit institution's business and of its position, consistent with the size and complexity of the business.
  - b) To the extent necessary for an understanding of the credit institution's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.
  - c) In providing its analysis, the annual report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.

<sup>1</sup> As modified by the law of March 16, 2006

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- (2) The report shall also give an indication of:
- a) any important events that have occurred since the end of the financial year;
  - b) the likely future development of the undertaking;
  - c) the activities of the undertaking in the field of research and development;
  - d) as concerns the acquisition of the undertaking's own shares, the provisions of article 49-5, paragraph (2) of the law of 10 August 1915 concerning commercial companies.
  - e)<sup>1</sup> the existence of branches of the credit institution;
  - f)<sup>1</sup> as regards the use of financial instruments by the undertaking and where relevant to the valuation of its assets, liabilities, financial position and profit or loss:
    - the credit institution's financial risk management objectives and policies, including its policies for hedging each major type of forecasted transaction for which hedge accounting is used, and
    - the credit institution's exposure to price risk, credit risk, liquidity risk and cash flow risk.

### Chapter 10: Publication

**Article 71** (1)<sup>1</sup> The credit institutions' duly approved annual accounts and the directors' report, together with the opinion submitted by the person or persons responsible for auditing the accounts (hereafter "the statutory auditors") must be filed during the month of approval, and at the latest seven months after the closing of the financial year, in accordance with article 79, paragraph (1) of the law of December 19, 2002 on the trade and companies register and on the accounting and annual accounts of undertakings<sup>2</sup>.

(2) The annual accounts of credit institutions must be published in every Member State of the EEC in which that credit institution has branches.

**Article 72** Where the annual accounts and the directors' report are published in full, they must be reproduced in the form and text on the basis of which the person responsible for the audit of the accounts has prepared his audit report. They must be accompanied by the full text of the report prepared by the auditor.

**Article 73** Where the annual accounts are not published in full the undertaking must publish the accounts with a statement that the accounts are abridged and reference must be made as to where the annual accounts in full are filed, as defined in article 71, paragraph (1).

Where the filing referred to above has not yet taken place, this must be mentioned. The report of the statutory auditors shall not accompany this publication, but it shall be disclosed whether an unqualified, qualified or adverse audit opinion was expressed, or whether the statutory auditors were unable to express an audit opinion. It shall also be disclosed whether the report of the statutory auditors included a reference to any matters to which the statutory auditors drew attention by way of emphasis without qualifying the audit opinion.

<sup>1</sup> As modified by the law of March 16, 2006

<sup>2</sup> As modified by the law of December 19, 2002

## Part II: Annual accounts

### Article 74

Certain information must be filed at the same time as the annual accounts as follows:

- the proposed allocation of the profit or loss of the financial year;
  - the final allocation of the profit or loss of the financial year,
- in the case where these items do not appear in the annual accounts.

### Article 74bis<sup>1</sup>

In addition to the presentation currency in which they are established, annual accounts may also be disclosed in Euro, using the conversion rate as at the closing date of the balance sheet. This rate is specified in the notes to the accounts.

## Chapter 11: Control

### Article 75

The statutory auditors in charge of auditing the annual accounts, pursuant to article 10, paragraph (1) of the Financial Sector law of April 5, 1993 as amended, shall also express an opinion concerning the consistency or not of the directors' report with the annual accounts for the same financial year<sup>1</sup>.

### Article 75bis<sup>1</sup> (1)

The report of the statutory auditors shall include the following:

- a) an introduction which shall at least identify the annual accounts that are the subject of the statutory audit, together with the financial reporting framework that has been applied in their preparation;
- b) a description of the scope of the statutory audit which shall at least identify the auditing standards in accordance with which the statutory audit was conducted;
- c) an audit opinion which shall state clearly the opinion of the statutory auditors as to whether the annual accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the annual accounts comply with statutory requirements. The audit opinion shall be either unqualified, qualified, an adverse opinion or, if the statutory auditors are unable to express an audit opinion, a disclaimer of opinion;
- d) a reference to any matters to which the statutory auditors draw attention by way of emphasis without qualifying the audit opinion;
- e) an opinion concerning the consistency or not of the directors' report with the annual accounts for the same financial year.

- (2) The report shall be signed and dated by the statutory auditors.

## Chapter 12: Equity basis accounting in annual accounts

### Article 76 (1)

Credit institutions may include in the balance sheet participating interests, as described in article 18, which are held in undertakings in which the parent company has a notable influence over the operating and financial policy, in conformity with paragraphs (2) through (8) below. The participating interest shall be shown in the balance sheet as "Participating interests" or "Shares in affiliated undertakings"; the sub-item shall be called "Undertakings accounted for on an equity basis". An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20% or more of the shareholders' or members' voting rights in that undertaking. Article 78 of the present law shall apply.

<sup>1</sup> As modified by the law of March 16, 2006

## Part II: Annual accounts

- (2) When this article is applied for the first time to a participating interest covered by paragraph (1) above, that participating interest shall be shown in the consolidated balance sheet either:
- at its book value calculated in accordance with the valuation rules laid down in chapter 7 or 7bis<sup>1</sup> of part II of this law. The difference between that value and the amount corresponding to the proportion of shareholders equity represented by that participating interest shall be disclosed separately in the balance sheet or in the notes to the accounts. That difference shall be calculated as at the date at which that method is used for the first time; or
  - at an amount corresponding to the proportion of the associated undertaking's shareholders equity represented by that participating interest. The difference between that amount and the book value calculated in accordance with the valuation rules provided for in chapter 7 or 7bis<sup>1</sup> of part II of this law shall be disclosed separately in the balance sheet or in the notes to the accounts. That difference shall be calculated as at the date at which that method is used for the first time;
  - the balance sheet or the notes to the accounts must indicate whether a) or b) has been used;
  - for the purposes of a) and b) above, the calculation of the difference as at the date of acquisition of the shares or, where they were acquired in two or more stages, as at the date at which the undertaking became an associated undertaking as foreseen in paragraph (1), is permitted.
- (3) Where an associated undertaking's (as defined in paragraph (1)) assets or liabilities have been valued by methods other than those used for the preparation of the annual accounts, they may, for the purpose of calculating the difference referred to in paragraph (2) a) or b) above, be revalued by the methods used by the undertaking preparing the annual accounts. Where such revaluation has not been carried out that fact must be disclosed in the notes to the accounts.
- (4) The book value referred to in paragraph (2) a) above, or the amount corresponding to the proportion of the associated undertaking's shareholders equity referred to in paragraph (2) b) above, shall be increased or reduced by the amount of any variation which has taken place during the financial year in the proportion of the associated undertaking's shareholders equity represented by that participating interest; it shall be reduced by the amount of the dividends relating to that participating interest.
- (5) In so far as the positive difference referred to in paragraph (2) a) or b) above cannot be related to any category of assets or liabilities it shall be amortised within five years.
- (6) The proportion of the profit or loss of the associated undertakings attributable to such participating interests, as defined in paragraph (1) shall affect the profit and loss account only in so far as it corresponds to dividends already received or for which payment may be claimed.
- The above shall be disclosed as a separate item entitled "Income from undertakings on an equity basis" which is to be included as a sub-item under items (3) b) or (3) c) – vertical layout or B 2 b) or B 2 c) – horizontal layout.
- (7) The eliminations referred to in article 95, paragraph (1) d) of this law shall be effected in so far as the facts are known or can be ascertained. Article 95, paragraphs (2) and (3) of this law shall apply.
- (8) Where an associated undertaking, as defined in paragraph (1), draws up consolidated accounts, the foregoing provisions shall apply to the shareholders equity shown in such consolidated accounts.

<sup>1</sup> As modified by the law of March 16, 2006

## Part IIbis: Annual accounts established in accordance with International Financial Reporting Standards

### Article 76bis<sup>1</sup>

Credit institutions may elect not to apply the provisions of part II of this law and prepare their annual accounts in accordance with international accounting standards adopted according to the process set out in article 6, paragraph (2) of EC regulation n° 1606/2002 of the European Parliament and of the Council of July 19, 2002 on the application of international accounting standards.

In that case, the credit institutions concerned are still subject to the provisions of article 68 points 2), 5), 8), 9), 10) and 12), article 69, paragraph (1) and of articles 70, 71, 72, 73, 75 and 75bis of this law.

<sup>1</sup> As modified by the law of March 16, 2006

## Part III: Consolidated accounts

### Chapter 1: Conditions for the preparation of consolidated accounts

- Article 77**
- (1)** All credit institutions as defined in article 1 of this law are required to prepare consolidated accounts and a consolidated directors' report if the undertaking:
- a) has a majority of the shareholders' or members' voting rights in another undertaking;  
or
  - b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking and is at the same time a shareholder in or member of that undertaking;  
or
  - c) it is a shareholder or member of another undertaking and, by virtue of an agreement concluded with other shareholders or members of this undertaking, controls a majority of the voting rights of the latter;  
or
  - d) da) has the power to exercise, or actually exercises, dominant influence or control over another undertaking;<sup>1</sup> or,  
db) that undertaking and another are managed on a unified basis<sup>1</sup>.
- (2)** For the purpose of this law, the undertaking holding the rights mentioned in paragraph (1) is designated the parent undertaking; the undertakings in which such rights are held are designated subsidiary undertakings.
- Article 78**
- (1)** For the purposes of article 77, paragraph (1), a), b) and c), the voting rights and the rights of appointment and removal of any subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent undertaking or of subsidiary undertakings must be added to those of the parent undertaking.
- (2)** For the purpose of article 77, paragraph (1), a), b) and c), the rights mentioned in paragraph (1) above must be reduced by the rights:
- a) attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof;  
or
  - b) attaching to shares held by way of guarantee, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the guarantee.
- (3)** For the purposes of article 77, paragraph (1), a) and c), the total of the shareholders' or members' voting rights in the subsidiary undertaking must be reduced by the voting rights attaching to the shares held by that undertaking itself, by a subsidiary undertaking of that undertaking or by a person acting in his own name but on behalf of those undertakings.
- Article 79**
- (1)** Without prejudice to article 83<sup>1</sup>, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated regardless of where the registered offices of such subsidiary undertakings are situated.
- (2)** For the purposes of paragraph (1) above, any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary undertaking of the parent undertaking which is the parent of the undertakings to be consolidated.

<sup>1</sup> As modified by the law of March 16, 2006

## Part III: Consolidated accounts

### Article 80

- (1) Notwithstanding article 77, any parent undertaking which is also a subsidiary undertaking is exempt from the obligation to prepare consolidated accounts and a consolidated annual report where that undertaking's parent company is subject to the laws of a Member State of the European Community in the following two cases:
- a) That parent undertaking holds all of the shares in the exempted undertaking. The shares in that undertaking held by members of its administrative, management or supervisory bodies pursuant to an obligation in law or in the memorandum or articles of association shall be ignored for this purpose; or
  - b) That parent undertaking holds 90% or more of the shares in the exempted undertaking and the remaining shareholders in or members of that undertaking have approved the exemption.
- (2) The exemption shall be conditional upon compliance with all of the following conditions:
- a) the exempted undertaking and, without prejudice to article 83, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings, the parent undertaking of which is governed by the law of a Member State of the European Community;
  - b)
    - aa) the consolidated accounts referred to in (a) above and the consolidated directors' report of the larger body of undertakings must be drawn up by the parent undertaking of that body and audited, according to the law of the Member State by which the parent undertaking of that larger body of undertakings is governed;
    - bb) the consolidated accounts referred to in (a) above, the consolidated directors' report referred to in (aa) above and the report by the person responsible for auditing those accounts must be published for the exempted undertaking in the manner prescribed by article 112, paragraph (1).
  - c) the parent undertaking is a credit institution as defined in article 14, paragraph (2) of this law;
  - d) the notes to the annual accounts of the exempted undertaking must disclose:
    - aa) the name and registered office of the parent undertaking that draws up the consolidated accounts referred to in (a) above; and
    - bb) the exemption from the obligation to draw up consolidated accounts and a consolidated annual report.
- (3)<sup>1</sup> This article does not apply to those credit institutions whose securities are admitted to trading on a regulated market of any Member State of the European Community within the meaning of article 4, paragraph (1) (14) of Council Directive 2004/39/EC.

### Article 81

In those cases other than those covered by article 80, paragraph (1), any parent undertaking which is also a subsidiary undertaking, whose parent undertaking is governed by the law of a Member State of the European Community, is exempt from the obligation to prepare consolidated accounts and a consolidated directors' report provided that all the conditions set out in article 80, paragraph (2) are fulfilled and provided that the shareholders in or members of the exempted undertaking, who own at least 10% of the subscribed capital of that undertaking if the exempted undertaking is a limited liability company or limited partnership with share capital (*société en commandite par actions*) and at least 20% if it is another type of company, have not requested the preparation of consolidated accounts at least six months before the end of the financial year.

<sup>1</sup> As modified by the law of March 16, 2006

## Part III: Consolidated accounts

- Article 82**
- (1)** Notwithstanding article 77, paragraph (1), any parent undertaking which is also a subsidiary undertaking of a parent undertaking not governed by the law of a Member State of the European Community is exempt from the obligation to prepare consolidated accounts and a consolidated annual report if the following conditions are fulfilled;
- a) the exempted undertaking and, without prejudice to article 83<sup>1</sup>, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings;
  - b) the consolidated accounts referred to in a) above and, where appropriate, the consolidated directors' report, must be drawn up in accordance with this law or in an equivalent manner;
  - c) the consolidated accounts referred to in a) above, must have been audited by one or more persons authorised to audit accounts under the national law governing the undertakings which drew them up.
- (2)** Article 80, paragraph (2), b) bb), c) and d) are applicable, in addition to article 81.
- Article 83**
- (1)** An undertaking needs not to be included in consolidated accounts where it is not material for the purposes of article 85, paragraph (3).
- (2)** Where several undertakings satisfy the requirements of paragraph (1) above, they must nevertheless be included in consolidated accounts, if, as a whole, they are material for the purposes of article 85, paragraph (3).
- (3)** In addition, an undertaking needs not to be included in consolidated accounts where:
- a) severe long term restrictions hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;
  - b) the information necessary for the preparation of consolidated accounts in accordance with this law cannot be obtained without disproportionate expense or undue delay; or
  - c) the shares of that undertaking are held exclusively with a view to their subsequent resale.
- Where a subsidiary undertaking which is a credit institution as defined in article 14, paragraph (2) is not included in the consolidated accounts, but the shares of the undertaking are held temporarily in conjunction with financial assistance for the purpose of restructuring or rescuing the undertaking, the annual accounts of the undertaking shall be attached to the consolidated accounts and complementary information shall be furnished in the notes to the accounts as regards the nature and the terms of the financial assistance.
- Article 84** (deleted)<sup>1</sup>

<sup>1</sup> As modified by the law of March 16, 2006

## Part III: Consolidated accounts

### Chapter 2: Basis for preparation of consolidated accounts

- Article 85**
- (1) Consolidated accounts shall comprise the consolidated balance sheet, the consolidated profit and loss account and the notes to the accounts. These documents shall constitute a composite whole.
- Credit institutions may include other statements in the consolidated accounts, in addition to the documents referred to in the first paragraph<sup>1</sup>.
- (2) Consolidated accounts shall be drawn up clearly and in accordance with the present law.
- (3) Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole.
- (4) Where the application of the provisions of this law is not sufficient to give a true and fair view within the meaning of paragraph (3) above, additional information must be given.
- (5) Where, in exceptional cases, the application of a provision of articles 86 through 108 and article 115 is incompatible with the obligation imposed in paragraph (3) above, that provision must be departed from in order to give a true and fair view within the meaning of paragraph (3). Any such departure must be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.
- Article 86**
- (1) Articles 3 through 50 are applicable for the layout of the consolidated accounts, without prejudice to the provisions of this section and after taking into account essential adjustments as a result of the particular characteristics of consolidated accounts as compared to annual accounts.
- (2) Inventory items may be combined in the consolidated accounts if detailed description would entail undue expense.
- Article 87**
- The assets and liabilities of the undertaking included in a consolidation shall be incorporated in full in the consolidated balance sheet.
- Article 88**
- (1) The book value of shares in the capital of undertakings included in a consolidation shall be set-off against the proportion which they represent of the capital and reserves of those undertakings:
- That set-off shall be effected on the basis of book values as at the date at which such undertakings are included in the consolidation for the first time. Differences arising from such set-offs shall as far as possible be entered directly against those items in the consolidated balance sheet which have values above or below their book values;
  - The set-off can also be effected on the basis of the values of identifiable assets and liabilities as at the date of acquisition of the shares or, in the event of acquisition in two or more stages, as at the date on which the undertaking became a subsidiary;

<sup>1</sup> As modified by the law of March 16, 2006

## Part III: Consolidated accounts

c) Any difference remaining after the application of a) or resulting from the application of b) shall be shown as a separate item in the consolidated balance sheet under the title "Differences arising from the first consolidation". This item shall be shown as described in the layout of article 7 of this law between items 10 (intangible assets) and 11 (tangible assets) in the assets and between items 12 (revaluation reserve) and 13 (profit or loss brought forward) in the liabilities. That item, the methods used and any significant changes in relation to the preceding financial year must be explained in the notes to the accounts. Positive and negative differences can be offset provided a breakdown of such differences is given in the notes to the accounts.

(2) However, paragraph (1) above shall not apply to shares in the capital of the parent undertaking held either by that undertaking itself or by another undertaking included in the consolidation. In the consolidated accounts such shares shall be treated as own shares in accordance with this law.

### Article 89

(1) Instead of using the method outlined in article 88, undertakings to be consolidated may offset the book values of shares held in the capital of an undertaking included in the consolidation against the corresponding percentage of capital only, provided:

- a) the shares held represent at least 90% of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares of that undertaking other than shares to which are attached a limited right in distributions or in the case of liquidation;
- b) the proportion referred to in a) above has been attained pursuant to an arrangement providing for the issue of shares by an undertaking included in the consolidation; and
- c) the arrangement referred to in b) above did not include a cash payment exceeding 10% of the nominal value or, in absence of a nominal value, of the accounting par value of the shares issued.

(2) Any difference arising under paragraph (1) above shall be added to or deducted from consolidated reserves as appropriate.

(3) The application of the method described in paragraph (1) above, the resulting movement in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes to the accounts.

### Article 90

The amount attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as a separate item with the heading: "minority interests". This item is shown following the item entitled "Differences arising from the first consolidation" as defined in article 88.

### Article 91

The income and expenditure of undertakings included in a consolidation shall be incorporated in full in the consolidated profit and loss account.

## Part III: Consolidated accounts

### Article 92

The amount of any profit or loss attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit and loss account as a separate item with the heading: "minority interests". This item is shown in the balance sheet and in the profit and loss account as follows:

Profit or loss of the year  
including: part of the group  
                  minority interest

### Article 93

Consolidated accounts shall be drawn up in accordance with the principles enunciated in articles 94 to 97.

### Article 94

- (1) The methods of consolidation must be applied consistently from one financial year to another.
- (2) Derogations from the provisions of paragraph (1) shall be permitted in exceptional cases. Any such derogations must be disclosed in the notes to the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation taken as a whole.

### Article 95

- (1) Consolidated accounts shall show the assets, liabilities, financial position and profits or losses of the undertakings included in a consolidation as if the latter were a single undertaking.  
In particular:
  - a) debts and claims between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;
  - b) the reciprocal rights and agreements in relation to the off-balance sheet are also eliminated from the consolidated accounts;
  - c) income and expenditure relating to transactions between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;
  - d) profits and losses resulting from transactions between the undertakings included in a consolidation and included in the book values of assets, shall be eliminated from the consolidated accounts.

These eliminations can be done in proportion to the percentage of the capital held by the parent undertaking in each of the subsidiary undertakings included in the consolidation.
- (2) Derogations are permitted from the provisions of paragraph (1) d) above where a transaction has been concluded according to normal market conditions and where the elimination of the profit or loss would entail undue expense. Any such derogations must be disclosed and where the effect on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation, taken as a whole, is material, that fact must be disclosed in the notes to the consolidated accounts.
- (3) Derogations from the provisions of paragraph (1) a), b), c) and d) above shall be permitted where the amounts concerned are not material for the purposes of article 85, paragraph (3).

## Part III: Consolidated accounts

- Article 96**
- (1) Consolidated accounts must be drawn up as at the same date as the annual accounts of the parent undertaking.
  - (2) However, consolidated accounts may be drawn up as at another date in order to take account of the balance sheet date of the largest number or the most important of the undertakings included in the consolidation. Where use is made of this derogation that fact shall be disclosed in the notes to the consolidated accounts together with the reasons thereof. In addition, account must be taken or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between that undertaking's balance sheet date and the consolidated balance sheet date.
  - (3) Where an undertaking's balance sheet date precedes the consolidated balance sheet date by more than three months, that undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.

**Article 97**

If the composition of the undertakings included in a consolidation has changed significantly in the course of a financial year, the consolidated accounts must include information which makes the comparison of successive sets of consolidated accounts meaningful.

Where such a change is a major one this obligation may be fulfilled by the preparation of an adjusted opening balance sheet and an adjusted profit and loss account.

- Article 98**
- (1) Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods and in accordance with chapter 7 and 7bis and with article 99<sup>1</sup> of this law.
  - (2)
    - a) An undertaking which draws up consolidated accounts must apply the same methods of valuation as in its annual accounts. However, the use in consolidated accounts of other methods of valuation which conform to the above mentioned articles is permitted;
    - b) Where use is made of this derogation that fact shall be disclosed in the notes to the consolidated accounts and the reasons thereof given.
  - (3) Where assets and liabilities included in consolidated accounts have been valued by undertakings included in the consolidation by methods differing from those used for the consolidation, they must be revalued in accordance with the methods used for the consolidation, unless the results of such revaluation are not material for the purposes of article 85, paragraph (3). Departures from this principle shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes to the consolidated accounts and the reasons for them given.
  - (4) Account shall be taken in the consolidated balance sheet and in the consolidated profit and loss account of any difference resulting from the differing valuation methods described above arising on consolidation between the tax chargeable for the financial year and for preceding financial years and the amount of tax paid or payable in respect of those years, provided that it is probable that an actual charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.
  - (5) Where assets to be included in consolidated accounts have been the subject of exceptional value adjustments solely for tax purposes, they shall be incorporated in the consolidated accounts only after those adjustments have been eliminated. However, such assets may be incorporated in the consolidated accounts without the elimination of the adjustments, provided that their amounts, together with the reasons for them, are disclosed in the notes to the consolidated accounts.

<sup>1</sup> As modified by the law of March 16, 2006

## Part III: Consolidated accounts

- Article 99**
- (1) Exchange differences arising during the consolidation from the conversion of shareholders' equity existing at the beginning of the financial year of an affiliated undertaking or from the conversion of shareholders' equity existing at the beginning of the financial year of a participating interest, can be partly or totally included in an item "Conversion differences", as well as exchange differences resulting from the conversion of transactions initiated to hedge these shareholders' equities.
- This item has to be listed after the heading "Minority interests", as defined in article 90.
- (2) Income and expenses from affiliated undertakings and participating interests can be converted at the average exchange rates prevailing during the accounting period.
- Article 100**
- (1) The "Difference arising from the first consolidation" as defined in article 88, paragraph (1) c) which corresponds to a positive consolidation difference shall be amortised within a maximum of five years.
- (2) A positive consolidation difference may be immediately deducted, but separately disclosed, from consolidated reserves.
- Article 101**
- The "Difference arising from the first consolidation" as defined in article 88, paragraph (1) c) which corresponds to a negative consolidation difference may be transferred to the consolidated profit and loss account only:
- a) where that difference corresponds to the expectation at the date of acquisition of unfavorable future results in that undertaking, or to the expectation of costs which that undertaking will generate, in so far as such an expectation materialises;
- or
- b) in so far as such a difference corresponds to a realised gain.
- Article 102**
- (1) Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, the inclusion of that other undertaking in the consolidated accounts in proportion to the rights in its equity held by the undertaking included in the consolidation is permitted.
- (2) Articles 83 to 101 shall apply mutatis mutandis to the proportional consolidation referred to in paragraph (1) above.
- (3) Where this article is applied, article 103 shall not apply if the undertaking proportionally consolidated is an associated undertaking as defined in article 103.
- Article 103**
- (1) Where an undertaking included in a consolidation exercises a significant influence over the operating and financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, as defined in article 18 of this law, that participating interest shall be shown in the consolidated balance sheet as a separate item entitled "Participating interests accounted for on an equity basis". An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20% or more of the shareholders' or members' voting rights in that undertaking. Article 78 shall apply.

## Part III: Consolidated accounts

- (2) When this article is applied for the first time to a participating interest covered by paragraph (1) above, that participating interest shall be shown in the consolidated balance sheet:
- a) either at its book value calculated in accordance with the valuation rules laid down in part II of this law. The difference between that value and the amount corresponding to the proportion of shareholders' equity represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes to the accounts. That difference shall be calculated as at the date at which that method is used for the first time; or
  - b) at an amount corresponding to the proportion of the associated undertaking's shareholders equity represented by that participating interest. The difference between that amount and the book value calculated in accordance with the valuation rules laid down in part II of this law shall be disclosed separately in the consolidated balance sheet or in the notes to the accounts. That difference shall be calculated as at the date at which that method is used for the first time.
  - c) The consolidated balance sheet or the notes to the accounts must indicate whether a) or b) has been used. The difference obtained as a result of the application of the two methods is accounted for in an item entitled "Difference arising from the equity method".
  - d) For the purposes of a) or b) above, the calculation of the difference as at the date of acquisition of the shares or, where they were acquired in two or more stages, as at the date at which the undertaking became an associated undertaking, is permitted.
- (3) Where an associated undertaking's assets or liabilities have been valued by methods other than those used for consolidation in accordance with article 98, paragraph (2), they may, for the purpose of calculating the difference referred to in paragraph (2) a) or b) above, be revalued by the methods used for consolidation. Where such revaluation has not been carried out that fact must be disclosed in the notes to the accounts.
- (4) The book value referred to in paragraph (2) a) above, or the amount corresponding to the proportion of the associated undertaking's shareholders' equity referred to in paragraph (2) b) above, shall be increased or reduced by the amount of any variation which has taken place during the financial year in the proportion of the associated undertaking's shareholders' equity represented by that participating interest; it shall be reduced by the amount of the dividends relating to that participating interest.
- (5) In so far as the positive difference referred to in paragraph (2) a) or b) above cannot be related to any category of assets or liabilities it shall be dealt with in accordance with article 100 and article 115, paragraph (3).
- (6) The proportion of the profit or loss of the associated undertaking attributable to such participating interests shall be shown in the consolidated profit and loss account as a separate item under "Share in profit or loss of undertakings accounted for on an equity basis".
- (7) The eliminations referred to in article 95, paragraph (1) d) shall be effected in so far as the facts are known or can be ascertained. Article 95, paragraphs (2) and (3) shall apply.
- (8) Where an associated undertaking draws up consolidated accounts, the foregoing provisions shall apply to the shareholders' equity shown in such consolidated accounts.

## Part III: Consolidated accounts

- (9) This article needs not to be applied where the investment in the share capital of the associated undertaking is not material for the purposes of article 85, paragraph (3).

### Chapter 3: Content of the notes to the accounts

#### Article 104

Apart from the provisions already mentioned in this law, the notes to the accounts shall include the following information regarding the items in the balance sheet such as outlined in the layout in article 7 of this law, taking into account the essential adjustments resulting from specific characteristics of consolidated accounts as compared to annual accounts.

- (1) Ad item "Participating interests", Assets: the amount of the participating interests (non consolidated) in other credit institutions.
- (2) Ad item "Shares in affiliated undertakings", Assets: the shares (non consolidated) in credit institutions which are affiliated undertakings.
- (3) Ad item "Amounts owed to customers – saving deposits", Liabilities: the sum of savings deposits which are repayable on demand or which have agreed maturity dates or periods of notice.
- (4) Separate disclosure for each item and sub-item 3 b), 4 and 5, Assets, and 1 b), 2 a), 2 b) bb) and 3 b), Liabilities, for loans and advances and amounts owed, segregated according to their residual duration as follows:
- up to three months,
  - between three months and one year,
  - between one year and five years,
  - more than five years.

For item 4, Assets, the amount of loans for an undetermined duration must be shown.

When the loans and advances and amounts owed include scheduled payments by installment, the definition of residual duration is that period from the balance sheet date to the due date of each installment.

- (5) The amounts coming due in the year following the balance sheet date for item 6, Consolidated assets (bonds and other fixed-income transferable securities) and sub-item 3 a), Consolidated liabilities (debt securities in issue) shall be disclosed.
- (6) The breakdown of the transferable securities included in items 6 through 9, Assets, according to whether or not they are quoted on an exchange.
- (7) The breakdown of the transferable securities in item 6, Assets, according to whether or not they are considered to be financial fixed assets as defined in article 56, as well as the criteria used to distinguish this category.
- (8) The breakdown of amounts due from leasing operations (item 5, Assets), distinguishing between those undertaken with credit institutions and those with customers.

## Part III: Consolidated accounts

- (9) The composition of the principal elements comprising the item “Other assets” and “Other liabilities” in the consolidated balance sheet if they are considered important for the understanding of the consolidated accounts. Moreover, their amount must be disclosed and an explanation of their nature shall be given.
- (10) The number and the nominal value and, when a nominal value does not exist, the par value of the share capital subscribed during the financial year within the limits of the authorised capital.
- (11) When there exist several categories of shares, the number and nominal value or, when a nominal value does not exist, the par value of each type of share.
- (12) The existence of beneficial shares, convertible bonds and securities or rights with similar characteristics, with an indication of the number of each security and the rights conferred by each.
- (13) The charges paid for subordinated liabilities by the credit institution during the course of the financial year, on a consolidated basis. Moreover, disclosure of the following shall be made:
- in respect of each borrowing which exceeds 10% of the total amount of the subordinated liabilities:
    - (i) the amount of the borrowing, the currency in which it is denominated, the rate of interest and the maturity date or the fact that it is a perpetual issue;
    - (ii) whether there are any circumstances in which early repayment is required;
    - (iii) the terms of the subordination, the existence of any provisions to convert the subordinated liability into capital or some other form of liability and the terms of any such provisions.
  - an overall indication of the rules governing other borrowings.
- (14) The total amount of assets and the total amount of liabilities denominated for in foreign currencies, which are translated into the currency in which the consolidated accounts are prepared.
- (15) A. Movements in the following fixed asset items, as defined in article 56:
1. Participating interests (not included in the consolidation)
  2. Shares in affiliated undertakings (not included in the consolidation)
  3. Bonds and other fixed-income transferable securities held as financial fixed assets
  4. Intangible assets including:
    - a) Formation expenses
    - b) Research and development expenses
    - c) Concessions, patents, licences, trademarks and similar rights and assets, if they were:
      - ca) acquired for valuable consideration, however, not including goodwill
      - cb) created by the undertakings included in the consolidation
    - d) Goodwill, if acquired for valuable consideration
    - e) Payments on account
  5. Tangible assets including:
    - a) Land and buildings
    - b) Plant and equipment
    - c) Other fixtures and fittings, tools and equipment
    - d) Payments on account and assets under construction
  6. Other asset items referred to in article 56, paragraph (1) c)

## Part III: Consolidated accounts

In addition, the notes to the accounts shall separately disclose, for each of the items and sub-items noted above, starting from the acquisition cost or production cost, the additions and disposals, and transfers in the year, cumulative value adjustments at the balance sheet date and corrections made in the year to value adjustments of previous years.

The obligation to separately disclose the value adjustments does not however apply to participating interests, shares in affiliated undertakings and transferable securities held as financial fixed assets. The value adjustments for these latter items may be combined with other items.

- B. If, at the time of preparation of the first consolidated accounts in conformity with the present law, the acquisition cost or the production cost of a fixed asset item cannot be determined without excessive cost or time delay, the residual value at the beginning of the financial year may be considered as the acquisition cost or production cost. The application of this exception must be disclosed in the notes to the accounts.
- C. In applying article 53 on a consolidated basis, the revaluated purchase price or production cost of the various fixed asset items referred to in point A shall be the starting point from which the movements of the year are disclosed.

### Article 105

Credit institutions shall disclose the following in the consolidated balance sheet or in the notes to the accounts:

- (1) Separately for each item noted below:
  - loans and advances, whether or not represented by a certificate, to affiliated undertakings not included in the consolidation, included in items 2 through 6, Assets;
  - loans and advances, whether or not represented by a certificate, to related undertakings not included in the consolidation, included in items 2 through 6, Assets;
  - debts, whether or not represented by a certificate, owed to affiliated undertakings not included in the consolidation, included in items 1, 2, 3 and 7, Liabilities;
  - debts, whether or not represented by a certificate, owed to related undertakings not included in the consolidation, included in items 1, 2, 3, and 7, Liabilities.
- (2) Separately for each item in the layout and the sub-items created as a result of paragraph (1): subordinated assets.

Subordinated assets, whether or not represented by a certificate, are those assets, the rights of which in case of liquidation or bankruptcy, can only be exercised after the rights of other creditors.
- (3)
  - a) If an asset or liability is shown under more than one item in the accounts, the relationship between the captions must be disclosed if it is necessary for the understanding of the consolidated accounts;
  - b) The own shares of the undertaking as well as the shares in affiliated undertakings may not be included in other items in the layout other than those expressly foreseen for this purpose.

## Part III: Consolidated accounts

### Article 106

- (1) The credit institution shall disclose in the notes to the accounts the nature and the amount of each type of consolidated contingent liability included in item 1 of the consolidated off-balance sheet considered significant, in terms of the entire consolidated activity of the undertaking.

Separate mention must be made if the contingent liabilities are on behalf of affiliated undertakings not included in the consolidation.

- (2) The notes to the accounts shall include the amount of assets given, by the undertakings included in the consolidation, in guarantee for transactions entered into by themselves or on behalf of third parties (including any contingent liabilities), for each consolidated liability or consolidated off-balance sheet item.

Separate mention must be made of assets given in guarantee for transactions entered into by affiliated undertakings, not included in the consolidation.

- (3) The notes to the accounts shall disclose the nature and amount of each commitment included in the consolidated off-balance sheet, considered significant in terms of the entire consolidated activity of the undertakings.

Separate mention must be made of transactions entered into on behalf of affiliated undertakings, not included in the consolidation. Moreover, the undertaking must disclose those engagements which are disclosed neither in the consolidated balance sheet nor in the consolidated off-balance sheet, if disclosure of these engagements is useful to the understanding of the consolidated financial position. Engagements relating to pensions and transactions entered into on behalf of affiliated undertakings not included in the consolidation, must be separately disclosed.

- (4) Forward transactions which are outstanding at the balance sheet date must be disclosed, together for each type of transactions, if a significant portion has been entered into for purposes of hedging fluctuations in interest rates, foreign exchange rates or market prices and if a significant portion has been entered into in relation to the commercial operations of the undertaking.

The above includes all operations: the income and charges which are covered by article 41 item 6, article 42 items A3 or B4 or article 43, point 3, for example, currencies, precious metals, transferable securities, "bons de caisse" and other assets.

- (5) Disclosure must be made if management and fiduciary services provided by an undertaking to third parties represent a significant portion of the consolidated activities of the undertaking.

### Article 107

In addition to the information required under other provisions of this section, the notes to the accounts must set out information in respect of the following matters at least:

- (1) The valuation methods applied to the various items in the consolidated accounts, and the methods employed in calculating the value adjustments. For items included in the consolidated accounts which are or were originally expressed in foreign currencies the bases of conversion used to express them in the currency in which the consolidated accounts are drawn up must be disclosed.

## Part III: Consolidated accounts

- (2) a) The names and registered offices of the undertakings included in the consolidation; the proportion of the capital held in undertakings included in the consolidation, other than the parent undertaking, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings; which of the conditions referred to in article 77 following application of article 78 has formed the basis on which the consolidation has been carried out. The latter disclosure may, however, be omitted where consolidation has been carried out on the basis of article 77, paragraph (1) a) and where the proportion of the capital and the proportion of the voting rights held are the same;

b) The same information must be given in respect of undertakings excluded from a consolidation pursuant to of article 83<sup>1</sup> as well as, an explanation for the exclusion of the undertakings referred to in article 31<sup>1</sup>.
- (3) a) The names and registered offices of undertakings associated with an undertaking included in the consolidation as described in article 103, paragraph (1) and the proportion of their capital held by undertakings included in the consolidation or by persons in their own names but on behalf of those undertakings.

b) The same information must be given in respect of the associated undertakings referred to in article 103, paragraph (9), together with the reasons for applying that provision.
- (4) The names and registered offices of undertakings proportionally consolidated pursuant to article 102, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.
- (5) The name and registered office of each of the undertakings, other than those referred to in paragraph (2), (3) and (4) above, in which undertakings included in the consolidation, either themselves or through persons acting in their own names but on behalf of those undertakings, hold at least 20% of the capital, showing the proportion of the capital held, the amount of shareholders' equity, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where, for the purposes of article 85, paragraph (3), it is of negligible importance only. The information concerning shareholders' equity and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and where less than 50% of its capital is held (directly or indirectly) by the above mentioned undertakings.
- (6) The breakdown of the income referred to in items 1, 3, 4, 6 and 7 of article 41 or of items B1, B2, B3, B4 and B7 of article 42, by geographical markets where, from the point of view of the total of the organisation of all the undertakings included in the consolidation, these markets differ substantially.
- (7) The amount and nature of the principal components of "Other operating charges" and "other operating income" if such disclosure is important for the understanding of the consolidated profit and loss.
- (8) a) The average number of persons employed during the financial year by undertakings included in the consolidation, broken down by categories;

b) The average number of persons employed during the financial year by undertakings to which article 102 has been applied shall be disclosed separately.

<sup>1</sup> As modified by the law of March 16, 2006

## Part III: Consolidated accounts

- (9) The extent to which the calculation of the consolidation profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in article 51 and articles 54 through 64quater<sup>1</sup>, article 99 and in article 98, paragraph (5) was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on the future tax charges of the undertakings included in the consolidation taken as a whole is material, details must be disclosed.
- (10) The difference between the tax charged to the consolidated profit and loss account for the financial year and to those for earlier financial years and the amount of tax payable in respect of those years, provided this difference is material for the purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading.
- (11) The amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies of the parent undertaking by reason of their responsibilities in the parent undertaking and its subsidiary undertakings, and any commitments arising or entered into under the same conditions in respect of retirement pensions for former members of those bodies, with an indication of the total for each category.
- (12) The amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies of the parent undertaking by that undertaking or by one of its subsidiary undertakings, as well as commitments entered into on their behalf by way of guarantee of any kind. Only the total for each category must be given.
- (13)<sup>1</sup> Where the value of financial instruments is determined by reference to fair value, the notes to the accounts shall include:
- a) the significant assumptions underlying the valuation models and techniques that may have been used;
  - b) per category of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as changes included in the fair value reserve;
  - c) for each class of derivative financial instruments, information about the nature and extent of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows, and
  - d) a table showing movements in the fair value reserve during the financial year.
- (14)<sup>1</sup> Where the fair value method is not used for financial instruments, in accordance with chapter 7bis of this law:
- a) for each class of derivative financial instruments:
    - i) the fair value of the instruments, if such a value can be determined using either of the following methods:
      - a market value, for those financial instruments for which a reliable market can readily be identified. Where a market value is not readily identifiable for a given instrument but can be identified for its components or for a similar instrument, the market value may be derived from that of its components or of the similar instrument;
    - or

<sup>1</sup> As modified by the law of March 16, 2006

## Part III: Consolidated accounts

- a value resulting from generally accepted valuation models and techniques, for those instruments for which a reliable market cannot be readily identified. Such valuation models and techniques shall ensure a reasonable approximation of the market value.
- ii) information about the extent and the nature of the instruments, and
- b) for financial fixed assets referred to in article 64bis carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with article 56, paragraph (1) c) aa) of this law:
  - i) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;
  - ii) the reasons for not reducing the book value including the nature of the evidence that provides the basis for the belief that the book value will be recovered.

**(15)<sup>1</sup>** Separately, the aggregate amount of fees paid during the financial year to the statutory auditor or the audit firm for the audit of the financial statements, the aggregate amount of fees paid for other assurance services, the aggregate amount of fees paid for tax consulting services and the aggregate amount of fees paid for other services.

### Article 108

- (1)** The disclosures prescribed in article 107, paragraphs (2), (3), (4) and (5) may be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions. Any such omission must be disclosed in the notes to the accounts.
- (2)** Paragraph (1) shall also apply to the information prescribed in article 107, paragraph (6).

## Chapter 4: Affiliated undertakings

### Article 109

- (1)** The undertakings having relationships as described in article 77 as well as other undertakings having a relationship with one of the undertakings described above are considered to be affiliated undertakings for the purposes of the present law.
- (2)** Article 78 and article 79, paragraph (2) apply.

## Chapter 5: Consolidated directors' report

### Article 110

- (1)<sup>1</sup>** The consolidated directors' report shall include at least a fair review of the development and performance of the consolidated undertakings' business and of their position, together with a description of the principal risks and uncertainties that they face.

The review shall be a balanced and comprehensive analysis of the development and performance of the fusions and of the position undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business. To the extent necessary for an understanding of development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.

In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts.

<sup>1</sup> As modified by the law of March 16, 2006

## Part III: Consolidated accounts

- (2) In respect of those undertakings, the report shall also give an indication of:
- a) any important events that have occurred since the end of the financial year;
  - b) the likely future development of those undertakings taken as a whole;
  - c) the activities of those undertakings taken as a whole in the field of research and development;
  - d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings.
  - e)<sup>1</sup> as regards the use of financial instruments by the undertaking and where relevant for the valuation of assets, liabilities, financial position and profits or losses:
    - the credit institution's financial risk management objectives and policies, including its policies for hedging for each major type of forecasted transaction for which hedge accounting is used, and
    - the credit institution's exposure to price risk, credit risk, liquidity risk and cash flow risk.
- (3)<sup>1</sup> Where a consolidated directors' report is required in addition to the directors' report, the two reports may be presented as a single report. In preparing such a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole.

### Chapter 6: Control of the consolidated accounts

#### Article 111<sup>1</sup>

- (1) The credit institution which prepares consolidated accounts shall have them audited by the statutory auditor or auditors in charge of auditing the annual accounting documents.
- The person or persons responsible for auditing the consolidated accounts shall also express an opinion concerning the consistency or not of the consolidated directors' report with the consolidated accounts for the same financial year.
- (2) The report of the statutory auditors shall include:
- a) an introduction which shall at least identify the consolidated accounts which are the subject of the statutory audit, together with the financial reporting framework that has been applied in their preparation;
  - b) a description of the scope of the statutory audit which shall at least identify the auditing standards in accordance with which the statutory audit was conducted;
  - c) an audit opinion which shall state clearly the opinion of the statutory auditors as to whether the consolidated accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the consolidated accounts comply with statutory requirements; the audit opinion shall be either unqualified, qualified, an adverse opinion or, if the statutory auditors are unable to express an audit opinion, a disclaimer of opinion;
  - d) a reference to any matters to which the statutory auditors draw attention by way of emphasis without qualifying the audit opinion;
  - e) an opinion concerning the consistency or not of the consolidated directors' report with the consolidated accounts for the same financial year.

<sup>1</sup> As modified by the law of March 16, 2006

## Part III: Consolidated accounts

- (3) The report shall be signed and dated by the statutory auditors.
- (4) Where the annual accounts of the parent undertaking are attached to the consolidated accounts, the report of the statutory auditors required by this article may be combined with the report of the statutory auditors on the annual accounts of the parent undertaking required by article 75 of this law.

### Chapter 7: Publication

#### Article 112

- (1)<sup>1</sup> The duly approved consolidated accounts of the credit institutions and the directors report as well as the report of the statutory auditors must be disclosed by the credit institution which prepared them in accordance with article 341, paragraphs (1) and (2) of the Commercial Companies law of 15 August 1915 as amended.
- (2) Articles 72 and 73 of this law shall apply.
- (3) The consolidated accounts of credit institutions must be published in each Member State of the EEC in which the undertaking has branches.
- (4)<sup>1</sup> In addition to the reporting currency in which they are established, consolidated accounts may also be disclosed in euros, using the conversion rate as at the closing date of the balance sheet. This rate is specified in the notes to the accounts.

<sup>1</sup> As modified by the law of March 16, 2006

# Part IIIbis: Consolidated accounts established in accordance with International Financial Reporting Standards<sup>1</sup>

## Article 112bis<sup>1</sup>

Credit institutions, whose securities are not admitted to trading on a regulated market of a Member State within the meaning of article 4, paragraph (1), point 14 of Directive 2004/39/EC, may elect not to apply the provisions of part III of this law and may prepare their consolidated accounts in accordance with international accounting standards adapted according to the procedure set out in article 6, paragraph (2) of the EC Regulation n°1606/2002 of the European Parliament and of the Council of July 19, 2002 on the application of international accounting standards.

In that case, the credit institutions concerned are still subject to the provisions of articles 77 through 82, of article 107 points 2), 3), 4), 5), 8), 11), 12) and 15), of article 108, paragraph (1) and of articles 110, 111 and 112 of this law.

<sup>1</sup> As modified by the law of March 16, 2006

## Part IV: Obligations regarding publication of accounting documents for branches of foreign credit institutions and financial undertakings

### Chapter 1: Publication of accounting documents by branches having their registered office in the EEC

- Article 113**
- (1)** Branches of credit institutions and financial undertakings having their registered office in the EEC, must file every year, in conformity with article 9 of the law of 10 August 1915, as amended, on commercial companies, annual accounts, consolidated accounts, a directors' report, a consolidated directors' report as well as reports from the person responsible for the audit of the annual accounts and the consolidated accounts.
  - (2)** The documents described in paragraph (1) above must be prepared and verified, in conformity with the above-mentioned European directive 86/635/EEC, according to the regulation of the Member State of the EEC where the credit institution or the financial undertaking has its registered office.
  - (3)** Branches are not required to publish annual accounts related to their own activity.

### Chapter 2: Publication of accounting documents by branches of credit institutions having their registered office outside of the EEC

- Article 114**
- (1)** Branches of credit institutions having their registered office located outside the EEC must file every year, in conformity with article 9 of the law of 10 August 1915, as amended, on commercial companies, annual accounts, consolidated accounts, a directors' report, a consolidated directors' report and reports from the person responsible for the audit of the annual accounts and the consolidated accounts of their credit institution, prepared and verified in accordance with the regulation of the country in which the registered office is located.
  - (2)** When the above-mentioned documents are prepared in accordance with parts II, III and V of this law or in a similar manner, article 113, paragraph (3) is applicable.
  - (3)** In situations other than the ones described in paragraph (2), documents must be restated in order to achieve the conformity or the similarity required in paragraph (2).

## Part V: Transitional and final provisions and provisions for changes



Article 115 to 117 (deleted)<sup>1</sup>

<sup>1</sup> As modified by the law of March 16, 2006

## Part VI: Penal dispositions



- Article 118**
- (1)** The directors and managers of the credit institutions having not published the balance sheet, the profit and loss account, the notes to the accounts, the directors' report and the report from the person or persons responsible for the audit of the accounts in penalty of accordance with articles 71, 72, 73, 74, 112, 113 and 114 of this law will be charged with a penalty of EUR 500 to EUR 25,000<sup>1</sup>.
- (2)** The directors and managers of credit institutions who fraudulently did not have the balance sheet, the income statement, the footnotes, the directors' report and the report from the person or persons responsible for the audit of the accounts published in accordance with articles 71, 72, 73, 74, 112, 113 and 114 of this law, will be sentenced to jail for between 1 month and 2 years and charged with a fine of EUR 5,000 to EUR 125,000<sup>1</sup>, or will incur only one of these penalties.

<sup>1</sup> As modified by law of 1 August 2001

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